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No. 98-1480

In The

Supreme Court of the United States

ROBERT A. BECK,

Petitioner,

v.

LEONARD BELLEZZA, ERNEST J. SABATO, WILLIAM PAULUS, JR., HARRY OLSTEIN, FREDERICK C. MEZEY, JOSEPH S. LITTENBERG,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF OF *AMICUS CURIAE* NATIONAL WHISTLEBLOWER CENTER IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF *AMICUS CURIAE* NATIONAL WHISTLEBLOWER CENTER

The National Whistleblower Center (Center)[1] is a nonprofit, tax-exempt, non-partisan, charitable, and educational organization dedicated to the protection of employees who "blow the whistle" and report misconduct in the workplace. In both the public and private sector, the Center assists employee whistleblowers who have been, *inter alia*, discriminated against for reporting violations of law and public safety.

In addition to its involvement in whistleblower litigation, the Center remains active in the education and advocacy of whistleblower protection. The Center sponsors and participates in public education programs and training seminars throughout the country. Furthermore, the Center operates an Attorney Referral Service for whistleblowers (with attorney members in 33 states) and maintains an in-depth and informative Internet web site at *www.whistleblowers.org*. The Center was admitted by this Court as an *amici* in *English v. General Electric*, 496 U.S. 72 (1990) and *Haddle v. Garrison*, 119 S.Ct. 489 (1998).

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[1] Counsel for Petitioner Robert A. Beck, II and Respondents Leonard Bellezza, Ernest J. Sabato, William Paulus, Jr., Harry Olstein, Frederick Mezey and Joseph S. Littenberg consented to the filing of an *amicus curiae* brief by the Center in this matter.

Pursuant to Rule 37.6, the Center maintains that no monetary contributions were accepted for the preparation or submission of this *amicus curiae* brief and that the Center's counsel, Stephen M. Kohn, Michael D. Kohn, and David K. Colapinto authored this brief in its entirety.

SUMMARY OF THE ARGUMENT

The plain meaning of Title IX of the Crime Control Act of 1970, Racketeer Influenced and Corrupt Organizations, ("RICO"), 18 U.S.C. § 1964(c), conveys standing to persons who are victimized by their attempts to disclose or oppose racketeering activities under civil RICO provisions.

Under long-standing rules of statutory construction, as articulated in *Caminette v. United States*, 242 U.S. 470, 490 (1917), if the plain meaning of the statute does not lead to an absurd or impracticable result, the plain meaning must be followed. Applying this rule to 18 U.S.C. § 1964(c), the statute unquestionably conveys standing to persons "injured" in their "property" (i.e., loss of employment), and when they are victimized "by reason of" exposing their employer's RICO violations.

By conveying standing, this court will not create a panacea for all employment discharge cases. Rather, the court will allow redress for cases which meet the strict specificity requirements under RICO. The specificity required in pleadings and the level of proof necessary to meet RICO requirements will limit the number of cases for adjudication to those fostering Congress' intent to eradicate illegal racketeering.

ARGUMENT

I. THE PLAIN MEANING OF 18 U.S.C. § 1964(c) CONVEYS STANDING TO PERSONS WHO ARE VICTIMIZED BY THEIR ATTEMPTS TO DISCLOSE OR OPPOSE RACKETEERING ACTIVITIES UNDER THE CIVIL RICO PROVISIONS.

This case concerns the interpretation of a civil plaintiff's standing pursuant to Title IX of the Crime Control Act of 1970, Racketeer Influenced and Corrupt Organizations ("RICO"), which provides:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court . . .

18 U.S.C. § 1964(c).

The first step in interpreting legislation is to determine what the words of the statute say.[2] Unless defined otherwise, words should be given their plain meaning. This court enunciated the plain meaning doctrine in *Caminette v. United States*, 242 U.S. 470, 490 (1917) when it stated "the language being plain and not leading to absurd or wholly impracticable consequences, it is the sole evidence of the ultimate legislative intent."

Here, there is no absurd or wholly impracticable consequence of applying the plain meaning. The Crime

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[2] *See Lewis v. United States*, 445 U.S. 55, 58 (1980) ("The Court has stated repeatedly of late that in any case concerning the interpretation of a statute the 'starting point' must be the language of the statue itself.")

Control Act of 1970 states as its purpose to "seek eradication of organized crime in the United States by strengthening the legal tools in the *evidence-gathering process*, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." *Organized Crime Control Act of 1970*, Pub. L. No. 91-452, 1970 U.S.C.C.A.N. (84 Stat.) 922 (emphasis added). If the purpose of the statute is eradication of organized crime, then exposure of the crime's existence is a mandatory first step in achieving Congress' purpose. The civil RICO provision, on its face, is sufficiently broad to protect persons who take this first step in crime prevention.[3]

Granting standing to persons victimized for disclosing or opposing illegal racketeering to obtain damages caused "by reason of" the racketeering activities is not impracticable or absurd. However, stripping these invaluable witnesses of meaningful protection will eviscerate "Congress' purpose in enacting" civil RICO.[4]

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[3] *See Bowman v. Western Auto Supply Co.*, 985 F.2d at 389, "Bowman may not able to prove that his firing took place in furtherance of a conspiracy to commit fraud, but he should be given that opportunity. A contrary holding assures employers that when troublesome employees threaten to disclose the commission of RICO violations, those employees can be threatened with termination to keep such violations hidden from public view." (Heaney, J., dissenting)

[4] *Id.* at 383.

II. ALLOWING STANDING TO EMPLOYEES DISCHARGED AS A RESULT OF DISCLOSING EMPLOYER'S RICO VIOLATIONS IS A NARROWLY TAILORED REMEDY FOR A UNIQUE BRAND OF CASES

In *Shearin v. E.F. Hutton Group, Inc.*, 885 F.2d 1162 (3rd Cir. 1989), the court of appeals found standing for an employee terminated for making disclosures about her employer's alleged RICO violations. In finding standing, the Third Circuit evaluated the facts of the case scrupulously and the employee was required to meet a substantial burden in demonstrating her case. *Id.* at 1165-69.

Based on the specificity requirements of the RICO statute and the stringent court analysis required to meet the specificity burden, only a narrow class of employment termination actions will meet these substantial requirements.[5] Victims who can meet these standards clearly fall within the class of persons Congress intended to protect from the egregious activities of illegal racketeering. Any other interpretation of the statute would lead to an absurd result.

Interpreting civil RICO as permitting the financial ruin of persons courageous enough to alert the appropriate authorities to violations of the criminal RICO statute is inconsistent and destructive to the letter of the law and the intent of Congress.

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[5] *Accord, Khurana v. Innovative Health Care Systems, Inc.*, 130 F.3d 143 (5th Cir. 1997); *Schiffels v. Kemper Financial Services, Inc.*, 978 F.2d 344 (7th Cir. 1992).

CONCLUSION

For the foregoing reasons, this Court should uphold Petitioner's argument and reverse the decision of the Eleventh Circuit Court of Appeals.

Respectfully submitted,

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